

**HAYES VARIANCE REQUEST
FOR A FUTURE HAYES FIRST MINOR SUBDIVISION APPLICATION**

STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS

CASE PLANNER: Randy Fifrick *RJ*

**REVIEWED/
APPROVED BY:** John Lavey *SL*

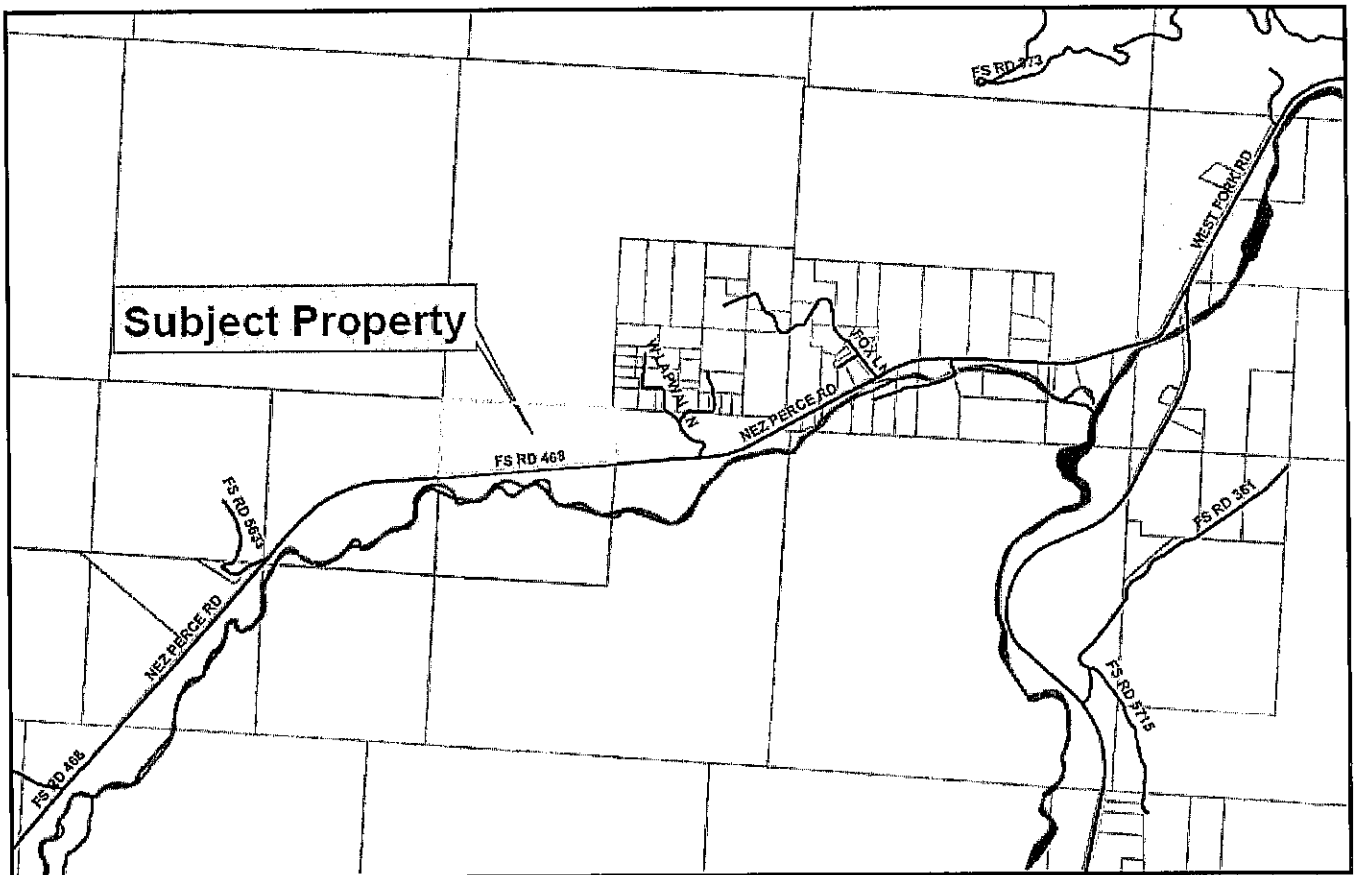
**PUBLIC HEARINGS/
MEETINGS:**

BCC Public Meeting:
Deadline for BCC action:

9:00 a.m. March 25, 2008
April 7, 2008

SUBDIVIDER/OWNER: Salleye Hayes
7195 Nez Perce Road
Darby, MT 59829

LOCATION OF REQUEST: The property is located southwest of Darby off of Nez Perce Road.
(See Map 1)



Map 1: Location Map
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION
OF PROPERTY:**

A parcel, located in the NE ¼ of Section 35, T1N, R22W, P.M.M.,
Ravalli County, Montana.

**APPLICATION
INFORMATION:**

The variance application was determined sufficient on February 15, 2008. Agencies were notified of the variance on February 19, 2008 and comments received by the Planning Department not included in the application packet are Exhibits A-1 through A-4 of the staff report. **This variance is being reviewed under the subdivision regulations amended May 24, 2007.**

LEGAL NOTIFICATION:

Notice of the project was posted on the property and adjacent property owners were notified by regular mail postmarked February 19, 2008. No public comments have been received to date.

**DEVELOPMENT
PATTERN:**

Subject property:	Low-Density Residential
North:	National Forest
South:	Low-Density Residential
East:	National Forest
West:	Low-Density Residential

INTRODUCTION

The property is accessed via US Highway 93 to West Fork Road to Nez Perce Road. The applicant is requesting a variance from Section 5-5-5 (a) of the Ravalli County Subdivision Regulations, which would require the applicant to establish at least two routes outside of the high-fire hazard area. Currently, there is only one route leading to the property.

The variance request was submitted ahead of the subdivision application. The applicant will propose a two-lot minor subdivision of 62.6 acres if the variance request is approved.

Staff recommends denial of the variance request.

**RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS
MARCH 25, 2008**

**HAYES VARIANCE REQUEST
FOR A FUTURE HAYES FIRST MINOR SUBDIVISION APPLICATION**

RECOMMENDED MOTION

That the variance request from Section 5-5-5(a) of the Ravalli County Subdivision Regulations, which requires the applicant to establish at least two routes outside of the high-fire hazard area, be **denied**, based on the findings of fact and conclusions of law in the staff report.

VARIANCE REQUEST

The applicant is requesting a variance from Section 5-5-5 (a) of the Ravalli County Subdivision Regulations, which would require the applicant to establish at least two routes outside of the high-fire hazard area.

Variance Analysis

Section 7-3-5(a), RCSR, outlines two sets of criteria to be used in analyzing a variance request.

Prerequisite Variance Criteria

In order for a variance to be considered for approval, the BCC must first determine that the variance request meets these stipulations:

1. Strict compliance with these regulations will result in undue hardship.
2. Compliance is not essential to the public welfare.

Variance Review Criteria

If and only if a positive determination is made on both of the prerequisite criteria, the BCC may then consider the variance for approval, based on the five variance review criteria:

- A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.
- B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.
- C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).
- D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.
- E. The variance will not cause a substantial increase in public costs.

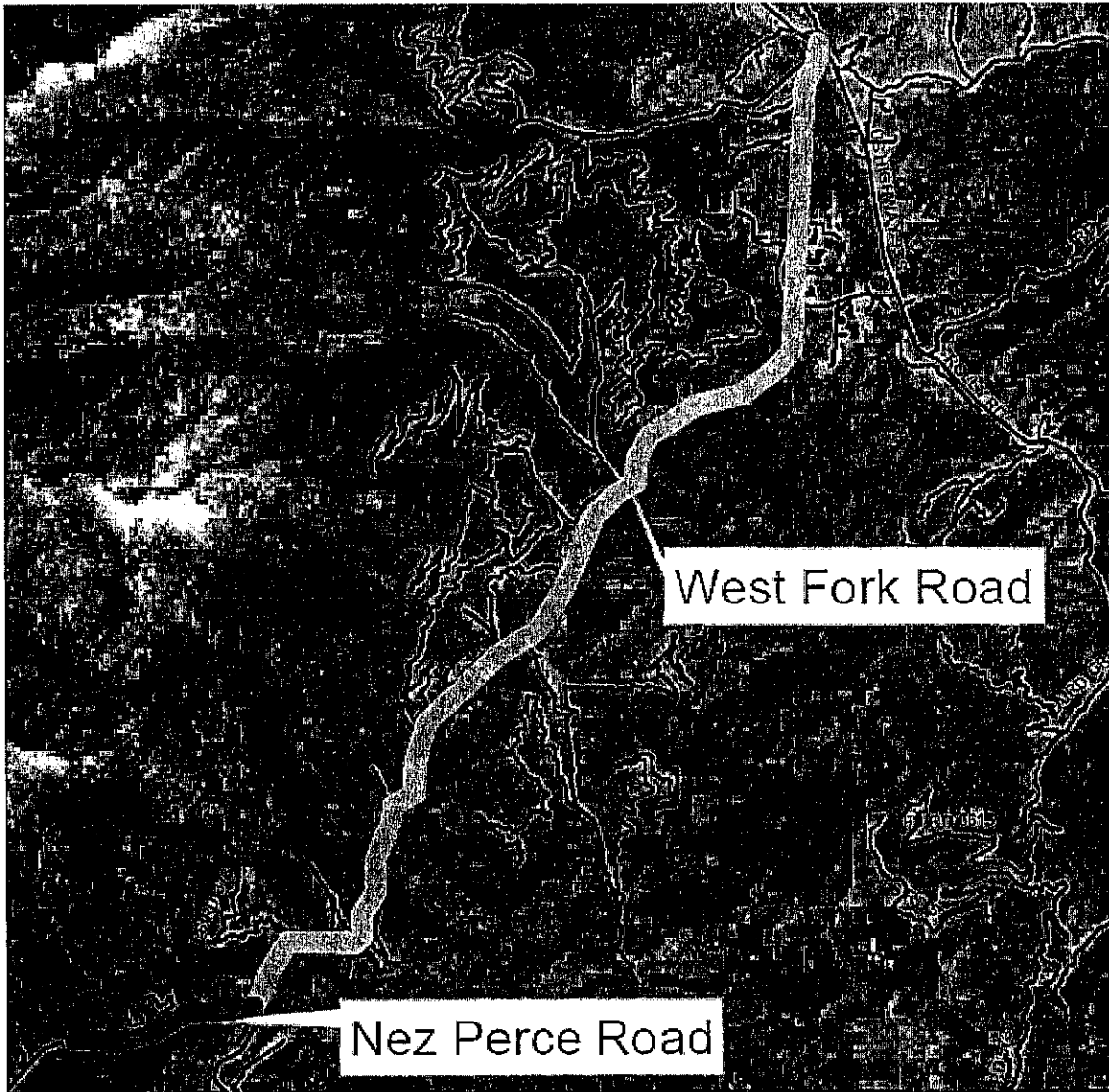
Both sets of criteria were reviewed simultaneously. Findings for Prerequisite Criterion #1 are based on an analysis of Variance Review Criteria B and C. Findings for Prerequisite Criterion #2 are based on an analysis of Variance Review Criteria A, D, and E.

Five Variance Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

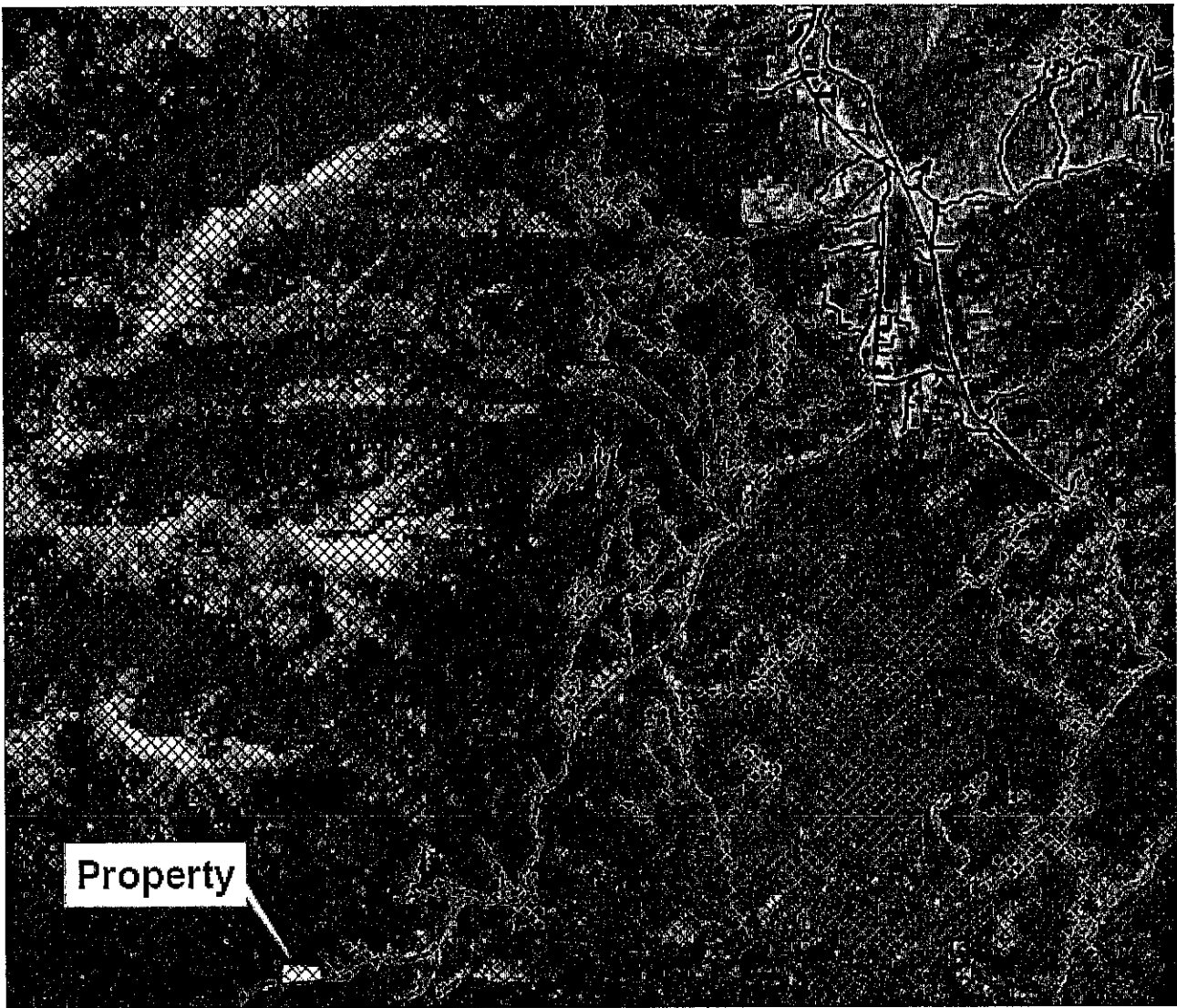
Findings of Fact:

1. Wildland fire events are common in the county. (RCSR 5-5-1(1))
2. The development is located approximately 23 miles southwest of the town of Darby. (RC GIS)



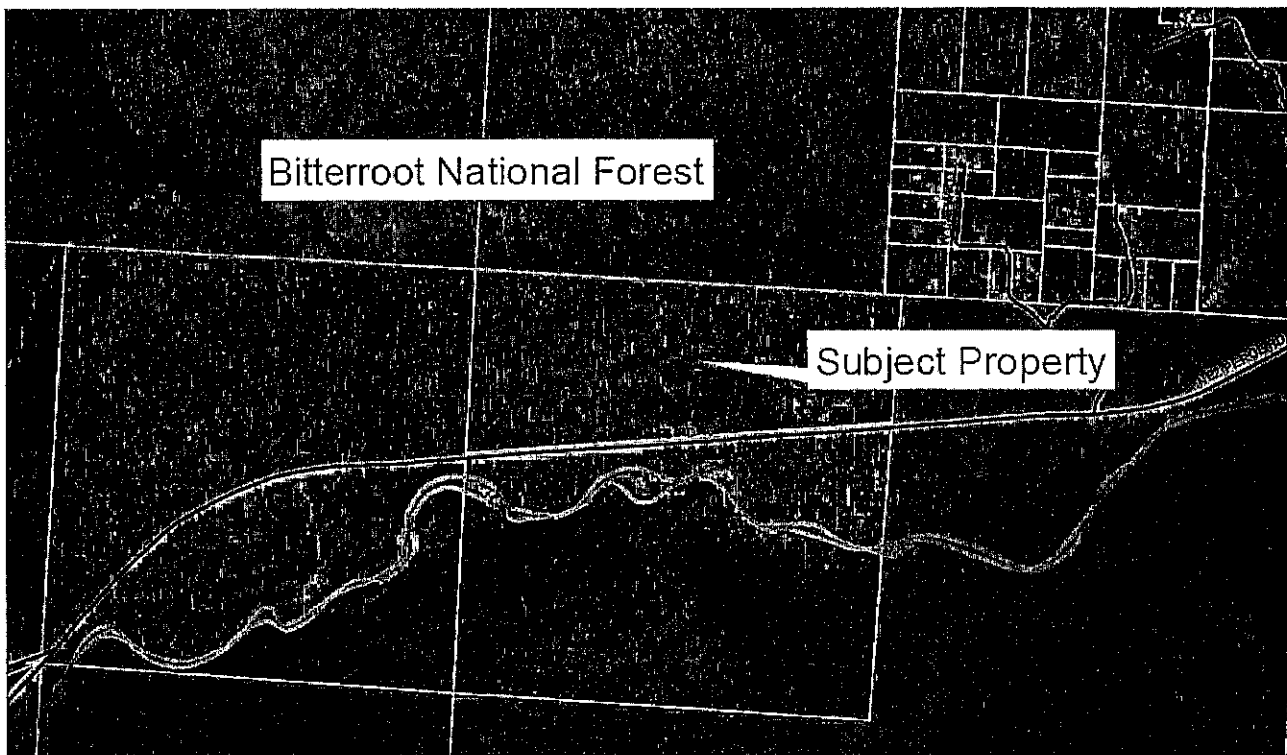
Map 2: Roads Leading to Property
(Source Data: Ravalli County GIS Department)

3. The property is accessed by traveling 14 miles on West Fork Road and two miles on Nez Perce Road. (RC GIS, Map 2)



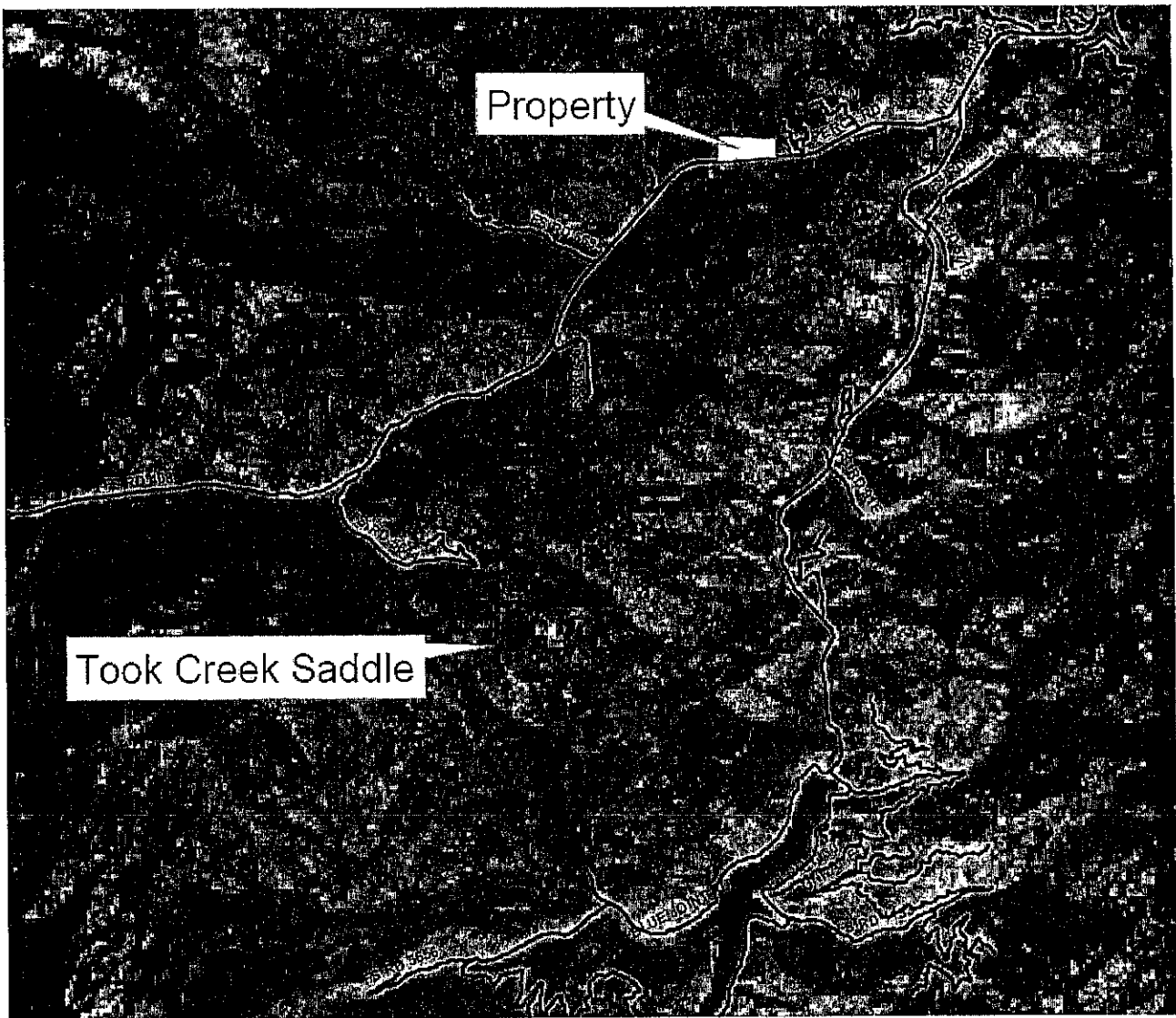
Map 3: Continuous Heavy Tree Cover
[Hatching represents heavy tree cover that was digitized using an aerial photo]
(Source Data: Ravalli County GIS Department)

4. There is continuous heavy tree cover located along 14 miles of the only route leading to the property. (RC GIS, Map 3)



Map 4: Location of Bitterroot National Forest
(Source Data: Ravalli County GIS Department)

5. The property is adjacent to the Bitterroot National Forest. (Hayes Variance Application, Map 4)
6. Nez Perce Road is a forest service road currently operated by Ravalli County under a cooperative agreement. (RCRBD, Exhibit A-1)
7. West Fork Road is a county maintained, state owned road. (RCRBD, RCSR (Exhibit A))
8. The applicant states that granting of this variance will have no detrimental effect on the public health, safety or welfare or on adjoining properties since Nez Perce Road is a well constructed, two lane highway with wide shoulders which can easily accommodate the additional traffic that the proposed lot will generate without interfering with emergency service vehicles. (Hayes Variance Application)
9. Nez Perce Road is a well constructed, well maintained road, but it only provides one route outside of the high fire hazard area. If the one route was blocked due to wildfire or a traffic accident, there would be no alternative escape route. (Staff Determination)
10. The problems associated with this variance request are a concern of public health and safety, not a road and bridge issue. (Exhibit A-1)
11. The Ravalli County Subdivision Regulations require that each lot in a subdivision has legal and physical access onto a public or private road that has at least two routes to outside of the high-fire hazard area. Where appropriate, one of the access routes can be considered as a secondary route provided it is: (RCSR Section 5-5-5(a))
 - Not used for normal access to the lots;
 - Properly signed as a secondary access route; and
 - Constructed to allow two-way traffic so fire equipment can move in and people move out. These roads should be coordinated with evacuation plans as may be prepared by the Ravalli County Department of Emergency Services.



Map 5: Roads South & West of Property
(Source Data: Ravalli County GIS Department)

12. The applicant states that Nez Perce Road connects to a Forest Service road across Took Creek Saddle, which leads to West Fork Road past Painted Rock Reservoir. This road was used by residents of the upper West Fork to avoid delays during the West Fork Road reconstruction project, and, like most forest service roads, has occasional turnouts that allow for two-way traffic. (Hayes Variance Application)
13. The applicant has proposed to use the forest service road across Took Creek Saddle as a secondary route outside of the fire hazard area. (Hayes Variance Application, Map 5)
14. The forest service road across Took Creek Saddle does not appear to meet any of the requirements of the RCSR Section 5-5-5(a). (Staff Determination)
15. The applicant has not provided evidence that the proposed secondary route meets the criteria contained in RCSR Section 5-5-5(a) particularly regarding the signage and the standards to which it has been constructed. (Staff Determination)
16. The Ravalli County Department of Emergency Services stated for the safety of any resident living in such a place, a variance would not be a recommended option. (Exhibit A-2)
17. Alan Tresemer, Painted Rocks Fire Rescue Company, stated that he thought the variance is warranted because both Nez Perce and West Fork Roads are good access roads for

responding equipment and escaping residents. No other findings or rationale were provided regarding why a secondary route meeting Section 5-5-5(a) should not be required in this situation. (Exhibit A-3)

18. There does not appear to be substantiated information, provided either by the applicant or agencies, that indicates the granting of the variance would not be detrimental to public health and safety. (Staff Determination)

Conclusion of Law:

Without findings of fact to prove otherwise, the possibility exists that the granting of the variance will be substantially detrimental to public health and safety, general welfare, and adjoining properties.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Findings of Fact:

1. The application states the proximity of this property to the new West Fork Volunteer Fire District Station and the size and the capacity of Nez Perce and West Fork Roads are unique circumstances that are not generally applicable to other properties in high-fire hazard areas. (Hayes Variance Application)
2. There are numerous properties located in wildland fire hazard areas in the same vicinity that utilize the same roads with only one route out of the area. (RC GIS)

Conclusion of Law:

The conditions upon which the variance is requested are not unique to the subject property.

C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Findings of Fact:

1. The application states the physical reality of this property being located in a relatively narrow drainage with only one way to get outside of the high-fire hazard area is a unique condition to this property that prevents the applicant from meeting the regulation for two routes out of the area. (Hayes Variance Application)
2. There are a limited number of access roads in the vicinity of the property due to topography. (RC GIS, Staff Determination)

Conclusion of Law:

The topography of the area makes it difficult for the applicant to meet this requirement.

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings of Fact:

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2193). The proposed subdivision density of a future subdivision application complies with Resolution 2193.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined in italics below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions. (Ravalli County Growth Policy)

Countywide Goal 4: *Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.*

Countywide Policy 4.1: *Encourage development that will minimize or avoid additional costs to existing taxpayers.*

- The wildland fire hazard design and development standards in the Ravalli County Subdivision Regulations address additional infrastructure requirements deemed necessary in high fire hazard areas. The subdivision regulations require that each lot within the high wildfire hazard area have access to a public or private road that has at least two routes to outside of the high-fire hazard area. The only secondary route suggested by the applicant requires further travel within the high fire hazard area before leaving this hazard zone.
- With only one access out of a wildland fire hazard area, it is possible the volunteer fire department or other agencies providing wildland firefighting assistance, which operate on taxpayer dollars, may need to make an emergency rescue in a fire event to ensure safety for residents. It also means that additional structures may be added to an area with only one route out and firefighters who may be called upon for structure protection may find themselves at risk.

Countywide Goal 7: *Plan for Residential and Commercial Development*

Countywide Policy 7.1: *Encourage residential and commercial growth adjacent to existing infrastructure.*

- The development is located on a well-developed and maintained access route; however, this is the only access directly out of the high-fire hazard area and the subject property is located approximately 23 miles from the town of Darby and 14 miles in an area of continuous heavy tree cover.

Conclusion of Law:

The subdivision proposal complies with applicable zoning regulations, but is not consistent with the adopted Growth Policy.

E. The variance will not cause a substantial increase in public costs.

Findings of Fact:

1. The applicant states granting this variance will not increase public costs since the Nez Perce Road and the West Fork Road are already at or near the established standard and can accommodate the additional traffic generated by the proposed lot. (Hayes Variance Application)
2. The problems associated with this variance request are a concern of public health and safety, not a road and bridge issue. (Exhibit A-1)
3. Development within the high wildfire hazard area that does not meet the special design standards can result in putting residents and fire fighters at risk, which can adversely affect public costs associated with emergency and wildfire suppression services; however, this has not been substantiated by local emergency services providers or the US Forest Service. (Staff Determination)
4. The total cost of fighting fires in Montana for fiscal year 2008 was \$45,244,662. (Montana Department of Natural Resources and Conservation)

Conclusion of Law:

Granting this variance could add to the substantial public costs associated with protecting human lives and structures from wildfire.

Prerequisite Variance Criteria

A. Strict compliance with these regulations will result in undue hardship.

Findings of Fact:

1. The conclusion for Criterion B is that the conditions upon which the variance is requested are not unique to the subject property.
2. The conclusion for Criterion C is that The topography of the area makes it difficult for the applicant to meet this requirement.

Conclusion of Law:

The requirement for a secondary access is not an undue hardship because it is necessary to protect public health and safety.

B. Compliance is not essential to the public welfare.

Findings of Fact:

1. The conclusion for Criterion A is that without findings of fact to prove otherwise, the granting of the variance will be substantially detrimental to public health and safety, general welfare, and adjoining properties.
2. The conclusion for Criterion D is that the subdivision proposal complies with applicable zoning regulations, but does not comply with the adopted Growth Policy.
3. The conclusion for Criterion E is that the granting of the variance could add to the substantial public costs associated with protecting human lives and homes from wildfire.

Conclusion of Law:

A secondary access is essential to public welfare.

C. Overall Conclusion on Hardship and Public Welfare

The variance application does not provide evidence that there is an undue hardship and that compliance with the RCSR is not essential to the public welfare.

Randy Fifrick

From: David Ohnstad
Sent: Monday, March 10, 2008 10:57 AM
To: Randy Fifrick
Cc: 'Amber M Lewis'
Subject: FW: Hayes Variance Request

Randy –

Given the location, I am not sure what a second access would accomplish. This more likely concerns public safety (sheriff and fire) than it is a Road & Bridge issue. The Nez Perce Road is still under the jurisdiction of the Bitter Root National Forest, currently operated by Ravalli County under a cooperative agreement.

I copy this to Amber Lewis, Forest Engineer, in the event she has comment.

David

From: Randy Fifrick
Sent: Monday, March 10, 2008 9:22 AM
To: David Ohnstad
Subject: Hayes Variance Request

Hi David,

Would it be possible for you to get me your comments on the variance criteria for this variance request by this Thursday?

Ravalli County has received an application for a variance from the Ravalli County Subdivision Regulations. The variance is for a future two-lot subdivision located off Nez Perce Road, southwest of the town of Darby, as shown on the attached vicinity map. The property is located within a wildfire hazard area in the West Fork Fire District (Painted Rocks is the secondary responder).

Variance Request: The applicant is requesting a variance from Section 5-5-5 (a) of the Ravalli County Subdivision Regulations, which would require the applicant to establish at least two routes outside of the high-fire hazard area.

A variance may be granted from the Subdivision Regulations when strict compliance with the regulations will result in undue hardship including substantial practical difficulty and when compliance is not essential to the public welfare. The variance application shall not be approved without an overall positive finding on the following:

1. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.
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4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.
5. The variance will not cause a substantial increase in public costs.

EXHIBIT A-1

3/10/2008

The Board of County Commissioners will conduct a public meeting on this proposed variance on **Tuesday, March 25, 2008, at 9:00 a.m.** in the Commissioners' Conference Room on the third floor of the Administrative Center (215 S. 4th Street, Hamilton). At the conclusion of the public meeting, the Board of County Commissioners may make a final decision on the variance proposal.

Thanks,

*Randy Fifrick
Ravalli County Assistant Planner
215 S 4th St, Suite F
Hamilton, MT 59840
406-375-6530
rfifrick@ravallicounty.mt.gov*

3/10/2008

Randy Fifrick

From: Ron Nicholas
Sent: Tuesday, March 11, 2008 4:20 PM
To: Randy Fifrick
Subject: RE: Hayes Variance Request

Absolutely

From: Randy Fifrick
Sent: Mon 3/10/2008 12:08 PM
To: Ron Nicholas
Subject: RE: Hayes Variance Request

Would your concern be for the public health and safety of people living in the area?

*Randy Fifrick
Ravalli County Assistant Planner
215 S 4th St, Suite F
Hamilton, MT 59840
406-375-6530
rfifrick@ravallicounty.mt.gov*

From: Ron Nicholas
Sent: Monday, March 10, 2008 12:07 PM
To: Randy Fifrick
Subject: RE: Hayes Variance Request

One comment from my office would be that for the safety of any resident living in such place a variance would not be a recommended option. I have not had any contact with this person.

Ron

From: Randy Fifrick
Sent: Monday, March 10, 2008 11:55 AM
To: Ron Nicholas
Subject: RE: Hayes Variance Request

Thanks for the help

*Randy Fifrick
Ravalli County Assistant Planner
215 S 4th St, Suite F
Hamilton, MT 59840
406-375-6530
rfifrick@ravallicounty.mt.gov*

From: Ron Nicholas
Sent: Monday, March 10, 2008 11:54 AM
To: Randy Fifrick

EXHIBIT A-2

3/14/2008

Subject: RE: Hayes Variance Request

Randy,

Found a possible contact with email at the West Fork Fire Dept.

Alan Segal
asegall@corvallis.myrf.net

From: Randy Fifrick
Sent: Monday, March 10, 2008 11:40 AM
To: Ron Nicholas
Subject: Hayes Variance Request

Hi Ron,

Has the applicant had any conversation with you in regards to this variance request? Would it be possible for you to get me your comments on the variance criteria for this variance request by this Thursday?

Ravalli County has received an application for a variance from the Ravalli County Subdivision Regulations. The variance is for a future two-lot subdivision located off Nez Perce Road, southwest of the town of Darby, as shown on the attached vicinity map. The property is located within a wildfire hazard area in the West Fork Fire District. If you could provide any comments you have by **Thursday March 13, 2008**, I would appreciate it.

Variance Request: The applicant is requesting a variance from Section 5-5-5 (a) of the Ravalli County Subdivision Regulations, which would require the applicant to establish at least two routes outside of the high-fire hazard area.

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Thanks,

3/14/2008

Randy Fifrick

From: A T [alant247@mac.com]
Sent: Wednesday, March 12, 2008 9:39 AM
To: Randy Fifrick
Subject: Re: Hayes Variance Request

Both Nez Perce and West Fork Roads are good access roads for responding equipment and escaping residents. There are numerous possible safety zones along both in the area of the proposed subdivision. Fuels are somewhat heavy along both, but that would be the county's problem. I don't know what the subdivision road system looks like.

Alan

Randy Fifrick wrote:

Thanks for your timely reply.

Do you have any concern about the current road design of Nez Perce Road and West Fork Road leading to the subdivision? Could you foresee safety problems getting fire equipment in and people out in an emergency?

Thanks for all your help!

*Randy Fifrick
Ravalli County Assistant Planner
215 S 4th St, Suite F
Hamilton, MT 59840
406-375-6530
rfifrick@ravallicounty.mt.gov*

From: A T [mailto:alant247@mac.com]
Sent: Tuesday, March 11, 2008 11:21 AM
To: Randy Fifrick
Subject: Re: Hayes Variance Request

Hello Randy,

As Chief of the Painted Rocks Fire District during last summer's Rombo Mountain Fire, I was chosen by the three Incident Management Teams as the Structure Protection Specialist for the incident. My job was to evaluate and design protection plans for all the structures in the West Fork Fire District in case the Rombo Mountain Fire extended into the community. The property in question was one of those that we addressed. It is an interesting property topographically. Compared to the neighboring Lapway/Fox Lane properties, it is far easier to defend from wildland fires, due mostly to the accessibility and reduced fuel loading. It appears that owners have been performing fuel mitigation over the years. I hope they continue to do so.

If the subdivision adheres to good road design (width and slope) and maintains fuel

clearance, I would say the variance is warranted. This property could easily handle more than the two lots suggested. I feel comfortable, from a fire protection perspective, in responding to a wildland fire at this location.

If you need further information, please feel free to contact me.

Alan Tresemer
Painted Rocks Fire Rescue Company

Randy Fifrick wrote:
Hi Alan,

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Thanks,

Randy Fifrick
Ravalli County Assistant Planner
215 S 4th St, Suite F
Hamilton, MT 59840
406-375-6530

Randy Fifrick

From: Kent Miller [kmiller02@fs.fed.us]
Sent: Tuesday, March 11, 2008 9:28 AM
To: David Ohnstad; Randy Fifrick
Cc: Amber M Lewis; Glenda Wiles
Subject: Re: Fw: Hayes Variance Request



Ravalli County
Data.pdf (47 KB...

David and Randy, As stated in our January 4, 2006 letter to the Planning Department the forest does not oppose this subdivision off the Nez Perce road due to it's small size and the anticipated jurisdictional transfer of the first 3.7 miles of the road to the county. The same holds true for this variance, the forest does not oppose the granting of the request. The Ravalli County Board of Commissioners in their April 11, 1996 letter to the Bitterroot National Forest agreed to assume jurisdiction of this road segment once the road was brought up to county standards. Reconstruction of the road has taken place and the forest has requested that the Board pass a resolution officially accepting the road as agreed upon. If you have any question please either call myself or Amber Lewis at 363-7160.

C. Kent Miller
Land Surveyor
Bitterroot & Lolo N.F's.
406-363-7148
Cell: 406-381-3288
kmiller02@fs.fed.us

Amber M
Lewis/R1/USDAFS

03/10/2008 11:39
AM

Kent Miller/R1/USDAFS@FSNOTES

To

cc

Subject

Fw: Hayes Variance Request

Kent -

Is this the same person that was trying to subdivide a small parcel a year or so ago???

Do we as the FS want to respond?? Thanks!!

A

Amber Lewis, P.E.
Forest Engineer and Lands Staff Officer
Bitterroot National Forest
1801 N 1st
Hamilton, MT 59840
(406) 363-7160
(406) 363-7165 fax

----- Forwarded by Amber M Lewis/RL/USDAFS on 03/10/2008 11:34 AM -----

"David Ohnstad"
<dohnstad@ravalli
icounty.mt.gov>

03/10/2008 10:56
AM

"Randy Fifrick"
<rfifrick@ravalllicounty.mt.gov>

To

cc

"Amber M Lewis" <alewis@fs.fed.us>
Subject

FW: Hayes Variance Request

Randy -

Given the location, I am not sure what a second access would accomplish. This more likely concerns public safety (sheriff and fire) than it is a Road & Bridge issue. The Nez Perce Road is still under the jurisdiction of the Bitter Root National Forest, currently operated by Ravalli County under a cooperative agreement.

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David

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Randy Fifrick
Ravalli County Assistant Planner
215 S 4th St, Suite F
Hamilton, MT 59840
406-375-6530
rfifrick@ravallicounty.mt.gov
(See attached file: Ravalli County Data.pdf)

Hayes Variance Request

Subject Property

Took Creek Saddle

Roads

- Federal
- County
- State
- Forest Service

Land Ownership

-  Federal
-  State

0 0.5 1 2 3 4 Miles